The plaintiff, a consenting victim of such a crime, sues the perpetrator. *Held*, that the plaintiff may recover. *Priboth* v. *Haveron*, 139 Pac. 973 (Okla.); *Hough* v. *Iderhoff*, 139 Pac. 931 (Ore.).

Both courts argue that consent is rendered legally impossible. This seems questionable. Although common law rape involves non-consent, it does not follow that in a statutory crime of the same name consent is legally non-existent while present in fact. See *Hardin* v. *State*, 39 Tex. Cr. R. 426, 431, 46 S. W. 803, 806. It is less fictitious and equally in harmony with the wording of the statutes cited to say that consent is made immaterial to criminal liability. The more satisfactory basis for the result is the reasoning underlying the well-established doctrine that the consent of either participant in an illegal mutual combat is no defense to an action by the other. *Bell* v. *Hansley*, 3 Jones (N. C.) 131; *Barholt* v. *Wright*, 45 Oh. St. 177, 12 N. E. 185. *Contra*, *Lykins* v. *Hamrick*, 144 Ky. 80, 137 S. W. 852. This rule appears to rest upon considerations of policy which render it supposedly inadvisable that consent to such a breach of the peace should remove all civil liability. *Stout* v. *Wren*, 1 Hawks (N. C.) 420. Such a conception is anomalous in civil law, where consent is normally a complete defense. But the courts have probably been influenced by the criminal-law principle that consent does not excuse an act which tends to a breach of the peace, or severe bodily harm, unless it negatives an essential element of the crime. If the doctrine of these mutual combat cases be accepted, as it must on authority, it seems *a fortiori* sound to allow an action to the immature victim of such a crime as that in the principal cases, where there has been an express legislative declaration of policy.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — MEASURE OF DAMAGES FOR DISCHARGE WITHOUT CAUSE. — An attorney was employed under a written contract to procure certain awards, his fees to be a percentage of the recovery. After having made material progress, he was discharged without cause. The client employed another lawyer who procured the awards. The original attorney now sues on the contract. *Held*, that he may recover the agreed compensation. *Martin* v. *Camp*, 161 N. Y. App. Div. 610.

A client may discharge his attorney at any time without cause. *In re Prospect Ave.*, 85 Hun 257, 32 N. Y. Supp. 1013. But such action merely dissolves the relation, and the client remains liable for the breach of the contract of retainer. *Texas* v. *White*, 10 Wall. (U. S.) 483. Where the fee is a fixed amount, or if contingent, has been rendered certain by subsequent events, as in the principal case, the attorney may recover the agreed compensation in full. *Carlisle* v. *Barnes*, 102 N. Y. App. Div. 573, 92 N. Y. Supp. 917; *Webb* v. *Trescony*, 76 Cal. 621, 18 Pac. 796. This measure of damages involves no departure from the usual rule of damages for breach of contract of employment, for it depends upon the impossibility of calculating the value of the contract to the attorney in any other way. Thus where the attorney would have been put to certain inevitable expenses in carrying out the rest of the contract, his recovery is reduced by that amount. *Brodie* v. *Watkins*, 33 Ark. 545. On the other hand, if the claim proves worthless after the discharge, an attorney engaged on a percentage basis is only entitled to nominal damages. *Swinnerton* v. *Monterey Co.*, 76 Cal. 113, 18 Pac. 135. But if the client recovers through the new counsel, or compromises the claim, it seems that the original attorney may sue at his option for the reasonable value of services rendered, instead of on the contract. *French* v. *Cunningham*, 149 Ind. 632, 49 N. E. 797.

BAILMENTS — BAILOR AND BAILEE — LIABILITY OF BAILEE FOR ACTS OF SERVANT. — In pursuance of its contract to call for the plaintiff's car and care for it in its garage, the defendant company sent an employee for the car. This servant took it on a frolic of his own, and while acting outside the scope of his

employment negligently damaged the car in a collision. *Held*, that the defendant is liable. *Southern Garage Co.* v. *Brown*, 65 So. 400 (Ala.).

Under a contract of bailment which contains no special provision concerning the care required of the bailee, it is well settled that he need exercise only ordinary care, and if he has exercised such care, he is not liable for injury done by a third person. *Russell* v. *Koehler*, 66 Ill. 459. Injury done by a servant acting outside the scope of his employment would seem to be analogous to injury done by a third person. In cases where the act of the employee is criminal, such as the embezzlement of a special deposit by the cashier of a bank, the law is clear that the bailee is not liable. *Foster* v. *Essex Bank*, 17 Mass. 478. The principal case does not seem properly distinguishable from this class of cases and it must be regarded as wrong. It is also opposed to authority, as the opposite result has been reached both in this country and in England in earlier cases. *Evans* v. *A. L. Dyke Automobile Supply Co.*, 121 Mo. App. 266, 101 S. W. 1132; *Sanderson* v. *Collins*, [1904] 1 K. B. 628.

BILLS AND NOTES — DEFENSES — EXTENSION OF TIME TO PRINCIPAL JOINT MAKER — NEGOTIABLE INSTRUMENTS LAW. — The defendant signed a joint note as surety for his co-maker. The payee knew of the suretyship relation, but made a binding contract with the principal maker, extending the time of payment, without the knowledge of the defendant, and now sues him. *Held*, that the plaintiff may recover. *Cowan* v. *Ramsey*, 140 Pac. 501 (Ariz.).

A surety co-maker will be discharged, at common law, by a binding extension of time given the principal debtor by a holder with notice of the suretyship relation. *Pooley* v. *Harradine*, 7 E. & B. 431; *Horne* v. *Bodwell*, 5 Gray (Mass.) 457. The principal case decides that the Uniform Negotiable Instruments Law abrogates this rule and permits recovery against the surety. Section 120 of the act enumerates the different modes of discharging a party secondarily liable, including the case of extension of time to the principal debtor. But it is obvious that a surety co-maker, being "by the terms of the instrument absolutely required to pay the same," is primarily liable under section 192. Section 119 gives five ways of discharging the instrument without mentioning discharge by extension of time to the principal. It is argued, therefore, in the principal case that since the provision as to discharge by extension of time is included in the section dealing with the discharge of parties secondarily liable, and omitted from the section as to the discharge of the instrument, and hence parties primarily liable, the legislative intent was not to discharge parties primarily liable in this manner. *Union Trust Co.* v. *McGinty*, 212 Mass. 205, 98 N. E. 679; *Cellers* v. *Meachem*, 49 Ore. 186, 89 Pac. 426. Such an inference would not seem necessary, however, since section 119 deals not with the discharge of parties to the instrument, but with the discharge of the instrument itself, and the discharge of the surety co-maker would not be a discharge of the instrument. Hence the omission of the provision as to extension of time would have no significance. By section 196, cases not provided for by the Negotiable Instruments Law are governed by the law merchant. The ordinary rules of suretyship would, therefore, apply to the principal case and the surety co-maker should be discharged by the extension of time. This result seems permissible by a fair construction of the statute, and would avoid overthrowing the established law of suretyship. *Farmers' Bank of Wickliffe* v. *Wickliffe*, 134 Ky. 627, 121 S. W. 498. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, p. 117.

BILLS AND NOTES — PAYMENT AND DISCHARGE — PAYMENT BY ANOMALOUS INDORSER. — The plaintiff indorsed the defendant's note for the accommodation of the payee, in ignorance of an equity in favor of the defendant.